



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 13 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 9353

Colonel John Wood, Commander
JBMDL Dix Public Water Systems
JB MDL/CC
2901 Falcon Lane
JB MDL, New Jersey 08641

Re: In the Matter of: U.S. Department of Air Force, Joint Base McGuire-Dix-Lakehurst
JBMDL-Dix Public Water Systems
Docket Nos. SDWA-02-2013-8401 to SDWA-02-2013-8412

Dear Commander Wood:

Enclosed you will find a fully executed Consent Agreement and Final Order ("CA/FO") which settles the above referenced action. The original and one copy of the CA/FO are being filed with the Regional Hearing Clerk with a copy of this letter.

Please do not hesitate to contact me at (212) 637-3231 should you have any questions. Thank you for your efforts to resolve this matter.

Sincerely,

Lauren Fischer
Assistant Regional Counsel

Enclosures

cc: Karen Maples, Regional Hearing Clerk w/ original and copy

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 JUN 13 P 2:33
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2013 JUN 13 P 2:33
REGIONAL HEARING
CLERK

IN THE MATTER OF:

United States Department of the Air Force
Joint Base McGuire-Dix-Lakehurst
Fort Dix, New Jersey

Respondent

JBMDL-Dix Public Water Systems:
JBMDL-Dix Main (NJ0325001)
JBMDL-Dix Brindle Lake (NJ0325304)
JBMDL-Dix ARDEC Test Site (NJ1523322)
JBMDL-Dix FOB Liberty (NJ1518365)
JBMDL-Dix Ammunition Supply Point (NJ0325322)
JBMDL-Dix BIV 18 (NJ0325307)
JBMDL-Dix BIV 20 (NJ0325308)
JBMDL-Dix BIV 22A (NJ0325309)
JBMDL-Dix I/R Site (NJ0325306)
JBMDL-Dix Range HQ (NJ0325305)
JBMDL- Dix Range 14 (NJ0325315)
JBMDL- Dix Times Square (NJ1518363)

Proceeding Pursuant to Section 1447 of the Safe
Drinking Water Act, 42 U.S.C. § 300j

CONSENT AGREEMENT
AND
FINAL ORDER

Docket Nos.

SDWA-02-2013-8401
SDWA-02-2013-8402
SDWA-02-2013-8403
SDWA-02-2013-8404
SDWA-02-2013-8405
SDWA-02-2013-8406
SDWA-02-2013-8407
SDWA-02-2013-8408
SDWA-02-2013-8409
SDWA-02-2013-8410
SDWA-02-2013-8411
SDWA-02-2013-8412

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 1447(a) and (b) of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. § 300j-6(a)-(b).
2. Section 1447 of the SDWA, 42 U.S.C. § 300j-6, authorizes the United States Environmental Protection Agency ("EPA") to take an enforcement action whenever it determines that a Federal agency is in violation of any requirement of the SDWA, EPA's regulations thereunder, or any regulation of a state drinking water program which has been authorized by EPA. Pursuant to Sections 1447(a) and (b), EPA may issue a penalty order against any Federal agency that owns or operates any public water system that violates a requirement of the Act.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 1447(b)(2) of the Act, 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation,

Termination or Suspension of Permits” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).

4. This Consent Agreement is entered into by the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“Complainant”) and the United States Department of the Air Force (“Respondent”), pursuant to Section 1447 of the Act, 42 U.S.C. § 300j-6(b), and in accordance with 40 C.F.R. Part 22. The authority to issue this Consent Agreement has been duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2.
5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of the specific requirements under subchapter XII of 42 U.S.C. §§ 300f to 300j-26, Sections 1401 to 1465 of the SDWA, as provided for in Sections II and III below.

II. FINDINGS OF FACT

1. Respondent owns the following twelve public water systems:
 - a. JBMDL-Dix Main (NJ0325001)
 - b. JBMDL-Dix Brindle Lake (NJ0325304)
 - c. JBMDL-Dix ARDEC Test Site (NJ1523322)
 - d. JBMDL-Dix FOB Liberty (NJ1518365)
 - e. JBMDL-Dix Ammunition Supply Point (NJ0325322)
 - f. JBMDL-Dix BIV 18 (NJ0325307)
 - g. JBMDL-Dix BIV 20 (NJ0325308)
 - h. JBMDL-Dix BIV 22A (NJ0325309)
 - i. JBMDL-Dix I/R Site (NJ0325306)
 - j. JBMDL-Dix Range HQ (NJ0325305)
 - k. JBMDL- Dix Range 14 (NJ0325315)
 - l. JBMDL- Dix Times Square (NJ1518363)

collectively referred to as “JBMDL-Dix public water systems,” located in Fort Dix, New Jersey, within the meaning of Sections 1401(4) and (5) of the SDWA, 42 U.S.C. §§ 300f(4) and (5), and 40 C.F.R. § 141.2.

2. Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300(f)(5), and 40 C.F.R. § 141.2.
3. Respondent is a “person” within the meaning of Section 1401 of the SDWA, 42 U.S.C. § 300f(12).
4. The United States Department of the Air Force is a “Federal agency” as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f-11.
5. Respondent’s public water systems (“PWSs”) provide water for human consumption. Respondent’s PWSs either regularly serve at least fifteen service connections used by year-round residents and/or serve a population of at least twenty-five individuals, and are therefore “community water systems” (“CWSs”); or serve at least twenty-five transient individuals for at

least sixty days in any given calendar year, and are therefore “transient non–community water system[s]” (“TNC”) as defined by Sections 1401(15) and (16) of the SDWA, 42 U.S.C. §§ 300f(15) and (16). Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141.

6. The New Jersey Department of Environmental Protection (“NJDEP” or “State”) administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g. The approval of primary enforcement responsibility from EPA to NJDEP was effective as of July 13, 1979. NJDEP is the primacy agency, as that term is defined in 40 C.F.R. § 142.2. On July 18, 2011, NJDEP referred JBMDL-Dix PWSs to EPA for further investigation and appropriate action.
7. Pursuant to Section 1414(i)(4) of the SDWA, 42 U.S.C. § 300g-3(i)(4), the implementing regulations for New Jersey’s Safe Drinking Water Program (N.J.A.C. 7:10) are applicable requirements of the SDWA.
8. Respondent is therefore subject to the SDWA and all implementing regulations, including those found in N.J.A.C 7:10.

Compliance with N.J.A.C. 7:10-8.2

9. Pursuant to N.J.A.C. 7:10-8.2, a supplier of water shall use only additives in drinking water that meet the American National Standards Institute (“ANSI”) and the National Sanitation Foundation Standards (“NSF”), ANSI/NSF Standard 60: Drinking Water Treatment Chemicals.
10. On May 9-10 and 14-16, 2012, EPA conducted a file review and on-site inspection (“file review/inspection”) to evaluate Respondent’s PWSs and its compliance with the requirements of the SDWA.
11. Based on information collected during the file review/inspection, Respondent used an uncertified disinfectant in the drinking water treatment process that does not meet the ANSI/NSF Standard 60.

Compliance with the Total Coliform Rule

12. On June 19, 1989, EPA promulgated the Total Coliform Rule (“TCR”) to protect consumers from microbiological contaminants in drinking water. The TCR establishes maximum contaminant level goals and maximum contaminant levels for the presence of total coliforms in drinking water. The TCR also establishes the type and frequency of monitoring which PWSs must follow.
13. Pursuant to 40 C.F.R. § 141.21(a), PWSs must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. Written sample siting plans are subject to State review and revision.
14. Based on information obtained during the file review/inspection, Respondent failed to have a written total coliform sample siting plan for eleven of its twelve PWSs. In addition, total coliform samples were collected at the entrance to the distribution system, an area that is not representative of water throughout the distribution system.

Post-File Review/Inspection

15. Based on the findings of the file review/inspection, on June 22, 2012, EPA issued twelve administrative orders, Docket Nos. SDWA-02-2012-8089 to 8100, to the United States Department of the Air Force, to establish an enforceable schedule for achieving compliance with the requirements of the SDWA and its implementing regulations at 40 C.F.R. § 141.21(a), and N.J.A.C. 7:10-8.2.
16. On June 30, 2012, Respondent replaced the uncertified additive with a disinfectant that is certified for potable water purposes in accordance with N.J.A.C. 7:10-8.2.
17. On July 3, 2012, Respondent submitted to EPA monitoring plans for eleven PWSs in accordance with the TCR and 40 C.F.R. § 141.21.

III. CONCLUSIONS OF LAW AND JURISDICTION

1. Respondent failed to comply with N.J.A.C. 7:10-8.2 by using an uncertified additive in the drinking water treatment process, and failed to comply with all monitoring requirements of the TCR, including 40 C.F.R. § 141.21(a). Respondent's failure to comply with the SDWA implementing regulations and New Jersey state drinking water program regulations constitute violations of the SDWA.
2. EPA has jurisdiction over the subject matter of this action pursuant to Section 1447 of the SDWA, 42 U.S.C. § 300j-6, and over Respondent.

IV. CONSENT AGREEMENT

1. Section II, Paragraphs 1-17 and Section III, Paragraphs 1-2 are re-alleged and incorporated by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Based upon the foregoing and pursuant to Section 1447 of the SDWA, 42 U.S.C. § 300j-6, and Section 22.13(b) of the CROP, 40 C.F.R. § 22.13(b), it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits nor denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and

- d. Consents to the payment of a civil penalty in the amount of **FORTY-FIVE THOUSAND DOLLARS (\$45,000.00)**, as stated in Section VI below.

VI. PAYMENT OF CIVIL PENALTY

1. Respondent shall pay a civil penalty to EPA in the amount of **FORTY-FIVE THOUSAND DOLLARS (\$45,000.00)**. Such payment shall be made by cashier's or certified check, or by Electronic Fund Transfer ("EFT"). If the payment is made by check, then the check shall be payable to the "Treasurer, United States of America," and shall be mailed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF THE UNITED STATES DEPARTMENT OF THE AIR FORCE, FORT DIX PWSs**, and shall bear thereon the **Docket Numbers SDWA-02-2013-8401 to SDWA-02-2013-8412**. Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

If Respondent elects to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$45,000.00.
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Department of the Air Force
- g. Case Numbers: SDWA-02-2013-8401 to SDWA-02-2013-8412

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Lauren Fischer, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3231

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York NY 10007-1866

- h. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- i. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- j. Any requirement for the payment of funds established under the terms of this Consent Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

VII. GENERAL PROVISIONS


1. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
2. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
3. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
4. Respondent knowingly and explicitly waives its rights under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3), to request or to seek any Hearing on or appeal of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
5. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8, to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
6. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3).
7. EPA reserves the right to commence action against any person or persons, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement

is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the CROP. Further, EPA reserves any right and remedy available to it under the SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

8. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the SDWA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.
9. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 1414 of the Act, 42 U.S.C. § 300g-3. Issuance of or compliance with this CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.
10. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. This CA/FO shall become effective 30 days after the date of signature on the Final Order.
13. Each party hereto agrees to bear its own costs and fees in this matter.
14. This action shall be considered closed upon EPA's receipt of payment by Respondent.

FOR RESPONDENT:

DATE: 29 MAR 13



JOHN M. WOOD, Col, USAF
Commander, JB MDL
2901 Falcon Lane
JB MDL, NJ 08641

FOR COMPLAINANT:

DATE: JUNE 7, 2013

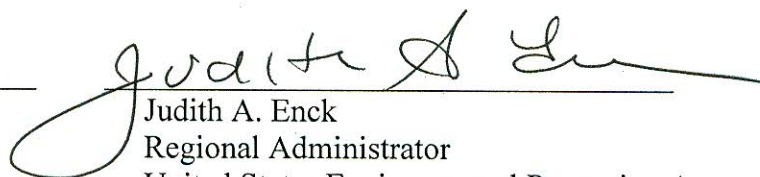


DORE LAPOSTA, Director
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency
Region 2
New York, New York 10007-1866

VIII. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Final Order shall be 30 days after the date of signature.

DATE: 6/10/13



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

United States Department of the Air Force
Joint Base McGuire-Dix-Lakehurst
Fort Dix, New Jersey

Respondent

JBMDL-Dix Public Water Systems:
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**CONSENT AGREEMENT
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FINAL ORDER**

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SDWA-02-2013-8408
SDWA-02-2013-8409
SDWA-02-2013-8410
SDWA-02-2013-8411
SDWA-02-2013-8412**

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the addresses listed below:

Colonel John Wood, Commander
JBMDL Dix Public Water Systems
JB MDL/CC
2901 Falcon Lane
JB MDL, NJ 08641

I sent by inter-office mail the original and a copy of the foregoing Consent Agreement/Final Order to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: **JUN 13 2013**

Print Name: Marie St. Germain
New York, NY